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6 SUPERIOR COURT OF WASHINGTON
7 FOR CLARK COUNTY
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9 RANDALL CASHATT, BRANDON KENDALL,
10 DAVID HODEL, CHAD PRENTICE, BETH
11 JOSWICK, JEFFREY HEATH, individually and on
12 behalf of all others similarly situated,
13 Plaintiffs,
14 vs.
15 FORD MOTOR COMPANY
16 Defendant

Case No.:

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

**CLAIM IS NOT SUBJECT TO
ARBITRATION**

16 The allegations herein are based on personal knowledge as to Plaintiffs' own conduct
17 and are made on information and belief as to all other matters based on an investigation by
18 counsel. Counsel's investigation includes an analysis of publicly available information,
19 including consumer complaints to the National Highway Transportation Safety
20 Administration, Technical Service Bulletins issued by Defendant, and additional analysis.
21 Plaintiffs believe that a reasonable opportunity for discovery will provide further support for
22 the claims alleged herein.

1 I. INTRODUCTION

2 1. Plaintiffs bring this class action against Ford Motor Company (“Ford” or
3 “Defendant”), individually and on behalf of all persons or entities in Washington State who
4 purchased, leased or own a Class Vehicle (defined below), for Defendant’s breach of express
5 and implied warranties, fraud, negligent misrepresentation, unjust enrichment and unfair
6 trade practices, concerning a known defect in thousands of vehicles sold in the United states
7 for Use in Washington State.

8 2. The affected vehicles are 2014-2017 model year Ford Explorers (the “Class Vehicles”).

9 3. The Class Vehicles include a defective exhaust and/or Heating, Ventilation, and Air
10 Conditioning system (the “HVAC System”) that allows exhaust odor and gases, including
11 carbon monoxide – an odorless, toxic gas, to enter the passenger compartment of the vehicles
12 while in use.

13 4. This hazardous defect has resulted in numerous complaints to the National Highway
14 Transportation Safety Administration (“NHTSA”) and the opening of a NHTSA investigation
15 into the Class Vehicles. Ford has recently issued an emission recall notice (19E02) for all
16 Ford Interceptor SUV’s built from 2011- to 2018.

17 5. The defect is not new to Ford. As early as 2012, Defendant had issued Technical
18 Service Bulletins (“TSBs”) to its exclusive network of dealers, recognizing the presence of
19 exhaust odors and fumes in the passenger compartment of certain Ford Explorers. Further,
20 in late 2016, Ford settled a class action litigation that alleged that model year 2011-
21 2015 Ford Explorers similarly permitted exhaust and other gases to enter the passenger
22 compartment.

1 6. The defect exposes Plaintiffs and potential Class members to noxious gases, such as
2 carbon monoxide, when the vehicles are in use and creates a clear safety hazard. For
3 example, complaints to NHTSA report that the presence of exhaust fumes in the Class
4 Vehicles cause headaches and dizziness on the part of occupants, which can lead to
5 accidents.

6 7. NHTSA's investigation summary reports:

7 ... three crash events and 25 injury incidents citing a total of 41 injuries. The alleged
8 injuries, as affirmatively indicated on the [Vehicle Owner Questionnaire] reports, range
9 from unspecified to loss of consciousness, with the majority indicating nausea, headaches, or
10 light headedness. One police incident alleged a crash with related injuries, and a second police
11 incident reported a physiological injury allegedly from carbon monoxide (CO) exposure.
12 Another reported police incident resulted in a rollover crash event with injuries.

13
14 8. Despite the TSBs, the class action settlement and the complaints to NHTSA and the
15 NHTSA investigation into the Class Vehicles, Defendant knowingly, actively, and
16 affirmatively omitted and/or concealed the existence of the defect to increase profits by selling
17 additional Class Vehicles. Knowledge and information regarding the defect and the
18 associated safety hazard was in the exclusive and superior possession of Defendant and its
19 dealers, and was not provided to Plaintiffs and members of the Classes, who could not
20 reasonably discover the defect through due diligence. Based on pre-production testing, design
21 failure mode analysis, and consumer complaints to dealers and NHTSA, inter alia, Defendant
22

1 was aware of the defect in the Class Vehicles and fraudulently concealed the defect
2 from Plaintiffs and members of the Classes.

3 9. Notwithstanding this knowledge, Ford continued selling defective vehicles, has failed
4 to disclose the existence of the defect to Plaintiffs and members of the Classes, has not issued
5 a recall, and has not remedied the issue and/or compensated Class Vehicle owners for the
6 material defect. Rather, Defendant wrongfully and intentionally concealed the defect from
7 Plaintiffs and members of the potential Classes.

8 10. No reasonable consumer expects to purchase or lease a vehicle that contains a
9 concealed defect that allows toxic gases, such as carbon monoxide, into the passenger
10 compartment when in use. The defect is material to Plaintiffs and members of the potential
11 classes because when they purchased or leased their Class Vehicles, they reasonably
12 relied on the reasonable expectation that the Class Vehicles' would be free from defects and
13 would not allow exhaust fumes into the vehicle. Had Defendant disclosed the defect,
14 Plaintiffs and/or members of the Classes would not have purchased leased, or operated the
15 Class Vehicles.

16 11. Defendant offers New Vehicle Limited Warranty coverage for Class Vehicles for 3
17 years or 36,000 miles which includes all components other than normal wear and maintenance
18 items.³

19 12. Plaintiffs and the Classes (defined below) assert claims against Defendant for
20 fraudulent concealment, negligent misrepresentation, breach of express and implied
21 warranties, violation of The Magnuson-Moss Warranty Act 15 U.S.C. § 2301 et seq., unjust
22 enrichment and for violations of the Revised Code of Washington.

13. As a direct result of Defendant's conduct, Plaintiffs and Class members have been harmed and are entitled to actual damages, including damages for diagnosis, repair and/or replacement costs, damages for the diminished value of their vehicles, compensatory, statutory and punitive damages, attorneys' fees, costs, restitution, and injunctive and declaratory relief.

II. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action as the vehicles were sold to the Washington State Patrol, for use in Washington State and operated by Plaintiffs who are all Washington State Patrol Troopers. Troopers operate in every county in the state and are required as part of their duties to patrol every county in this state. Because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this State, and because Defendant conducts a substantial amount of business in this State. Accordingly, Defendant has sufficient contacts with this State to subject Defendant to personal jurisdiction in the State of Washington and venue is proper.

III. PARTIES

1. Plaintiffs

1. **Plaintiffs are all first responders who operated the class vehicles and are members of the Washington State Patrol. Current Plaintiffs are Troopers who were issued the Ford Explorer Interceptors as their regular patrol vehicles.** Potential class members are all first responders who are/were required to operate the Ford Explorer vehicles as part of their work assignments, purchasers and leasors of Ford Explorers years 2011-2018 in Washington State.

1 15. Soon after receiving their assigned vehicles, Plaintiffs detected exhaust fumes within
2 the passenger compartment while driving. Plaintiffs thereafter presented their patrol vehicles
3 to authorized Ford dealerships in order to address the problem. The dealers were without
4 sufficient information from FORD to repair the vehicles and were unable to eradicate the
5 carbon monoxide intrusion into the passenger compartments of the Ford Vehicles.

6 16. Plaintiffs were advised that the vehicles were safe to drive and that there were no
7 problems which would cause them any hazard, injury or harm. Plaintiffs detected exhaust
8 fumes within the passenger compartment of their vehicles while driving, and Plaintiffs have
9 suffered headaches, nausea, foggy thinking, and flu like symptoms. Some Plaintiffs including
10 Trooper Cashatt, has suffered permanent neurological damage which has prevented him from
11 continuing his job as a Washington State Patrol Trooper. The exposure to chronic carbon
12 monoxide leaks existed from the time that the vehicles were put into use until present day.
13 FORD MOTOR Company misrepresented the seriousness of the design defect and blamed
14 after market additions to first responder vehicles as being the cause of the carbon monoxide
15 leaks when they knew in fact that this was not the case. FORD MOTOR Company also knew
16 that the technical bulletins could not eliminate carbon monoxide intrusion into the patrol
17 vehicles passenger compartment.

18 2. Defendant

19 17. Defendant FORD MOTOR COMPANY is a Delaware corporation, with its corporate
20 headquarters located in Dearborn, Michigan.

21 18. Ford designs, engineers, manufactures, markets and/or sells vehicles throughout the
22 United States, through its network of authorized motor vehicle dealers. Ford engages in

1 interstate commerce by selling vehicles through its authorized dealers located in every
2 state of the United States, including within this State.

3 19. At all times relevant to this action, Defendant and/or its agents manufactured,
4 distributed, sold, leased, and warranted the Class Vehicles, containing the defect described
5 herein, throughout the United States. Defendant developed and disseminated the owner's
6 manuals and warranty booklets, advertisements and other promotional materials relating to the
7 Class Vehicles. On information and belief, at all times relevant to this action, Defendant
8 made decisions related to advertisement, marketing, sales, warranties, and recalls of the Class
9 Vehicles its Dearborn, Michigan headquarters, which is located within this State.

10 11 **IV. FACTUAL ALLEGATIONS**

12 A. The Class Vehicles

13 20. The Class Vehicles – model year 2011-2018 Ford Explorers – are a part of Ford's fifth
14 generation of Explorer vehicles.

15 21. The model year 2011-2018 Ford Explorers include some upgrades and changes from
16 the prior year model, however upon information and belief, none of those changes addressed
17 and/or remedied the defect, which allowed exhaust fumes into the passenger compartment
18 while in use and which was present in the 2011-2018 Ford Explorers.

19 B. The Exhaust Fume Defect

20 22. The Class Vehicles were designed, engineered and manufactured by Ford with design
21 flaws and/or defective exhaust and/or HVAC Systems that cause the presence of exhaust
22 fumes, including carbon monoxide, in the passenger compartment while the vehicles are in

1 use (the "Exhaust Fume Defect"). By designing, manufacturing, assembling, inspecting,
2 distributing, selling and leasing the Class Vehicles with the Exhaust Fume Defect, Ford
3 rendered the Class Vehicles defective and unsafe for their intended use and purpose. Ford's
4 representative at a Florida Lemon Law Hearing on January 2, 2015 was:

5 we do feel that it's a design issue, not a
6 defect. The fact that it's being reported
7 across the large number of vehicles would show
8 that it's not a defect in this particular
9 vehicle -- excuse me -- and so we have to
10 question that.

11 We do feel that it's a design issue.

12 It's simply a vent leading somewhere where it
13 doesn't need to be; and, you know, it's just
14 being set in a certain way that's -- that's
allowing it to draw it into the -- into the
vehicle.

15 Referencing the location of the air intake adjacent to the manifold which sucks in carbon
16 monoxide into the passenger compartment of the vehicle.

17
18 23. Upon information and belief, the Exhaust Fume Defect was caused, among other
19 things, by Defendant's design, manufacture or assembly of the Class Vehicles':
20 bumper and/or tailpipes; rear air extractors; incompatible metal exhaust manifolds which
21 warped and allowed carbon monoxide to leak out and then be sucked into air intakes which
22 were erroneously located adjacent to the manifold; incompatible metal parts which warp under

1 heat; drain valves in the liftgates; sheet metal panels and overlaps; joints and seems;
2 inappropriate location of fresh air intake; air conditioning and defrost system and rear
3 auxiliary air conditioning system which allowed carbon monoxide, a colorless, odorless gas to
4 be intruded into the passenger compartment, poisoning the occupant(s). When the exhaust
5 manifold is replaced to the warp and release of carbon monoxide gas into the passenger
6 compartment, FORD's response was to replace the exhaust system, which was merely a
7 bandaaid fix as the exhaust system would warp and fail again over time. It was not a matter of
8 "IF" but when the deadly intrusion would occur.

9 24. Upon information and belief, Defendant's design, manufacture or assembly of these
10 components, among other things, allows exhaust fumes, including carbon monoxide, to
11 enter and accumulate in the passenger compartment.

12 25. According to the Centers for Disease Control and Prevention, **carbon monoxide (CO) is**
13 **"an odorless, colorless gas that can kill you."**

14 26. "CO is found in fumes produced any time you burn fuel in cars or trucks, small
15 engines, stoves, lanterns, grills, fireplaces, gas ranges, or furnaces. CO can build up indoors
16 and poison people and animals who breathe it.... **The most common symptoms of CO**
17 **poisoning are headache, dizziness, weakness, upset stomach, vomiting, chest pain, and**
18 **confusion."** Chronic exposure to carbon monoxide can cause mood changes, blurry
19 vision, ringing in the ears, personality changes, sleep disturbances, loss of hearing,
20 balance issues, decreased motor strength, hypersensitivity to chemicals, slowed motor
21 skills and reaction time, moodiness, anger, seizures, heart palpitations, numbness,
22 tingling, depression and anxiety.

1 27 As recognized by NHTSA, consumer complaints regarding the Class Vehicles have
2 been consistent with typical carbon monoxide symptoms, i.e., headaches, nausea and
3 dizziness, passing out while driving, accidents, ringing in the ears and an overall feeling of not
4 being well, similar to the flu.

5 28. Upon information and belief, aside from carbon monoxide, the exhaust fumes
6 present in the passenger compartment of the Class Vehicles as a result of the Exhaust Fume
7 Defect, may contain sulfur dioxide, nitrogen oxides, formaldehyde, benzene and soot, which
8 also present safety hazards for Plaintiffs and the Classes.

9 29 As alleged herein, Plaintiffs and members of the Classes unknowingly consumers who
10 are assigned their own patrol vehicles which they are required to operate daily that contain the
11 Exhaust Fume Defect and suffered damages related to their use of the Ford Explorer
12 Interceptors as a direct result of Defendant's omissions regarding the standard, quality or
13 grade of the Class Vehicles and/or the existence of the Exhaust Fume Defect and its
14 associated safety risks. The fact that the Class Vehicles suffer from the Exhaust Fume Defect
15 is material to Plaintiffs and members of the Classes because it exposes drivers and passengers
16 of the Class Vehicles to a safety hazard.

17 30. As a result of Defendant's material omissions, including its failure to disclose the
18 presence of the Exhaust Fume Defect in the Class Vehicles, Defendant has caused Plaintiffs
19 and members of the Classes to suffer actual damages, including but not limited to injury,
20 sickness and neurological damage by their exposure to exhaust fumes, including carbon
21 monoxide and permanent disability.

22 C. Defendant's Knowledge of the Defect and Associated Safety

1 Hazard

2 31. Ford has known since at least 2012 of the presence of exhaust fumes in the passenger
3 compartment of certain Ford Explorer models.

4 32. Ford's knowledge and information regarding the Exhaust Fume Defect were in the
5 exclusive and superior possession of Ford and its dealers, and that information was not
6 provided to Plaintiffs and members of the Classes. Based on pre-production testing, pre-
7 production design failure mode analysis, production design failure mode analysis, early
8 consumer complaints made to Defendant's network of exclusive dealers, aggregate
9 warranty data compiled from those dealers, repair order and parts data received from the
10 dealers, consumer complaints to dealers and NHTSA, and testing performed in response to
11 consumer complaints, inter alia, Defendant was aware (or should have been aware) of the
12 Exhaust Fume Defect in the Class Vehicles and fraudulently concealed the defect and safety
13 hazard from Plaintiffs and members of the Classes.

14 33. Defendant fraudulently, intentionally, negligently and/or recklessly omitted and
15 concealed from Plaintiffs and members of the Classes the defect in the Class Vehicles even
16 though Defendant knew or should have known of design and/or manufacturing defects in
17 Class Vehicles.

18 34. Defendant knew, or should have known, that the Exhaust Fume Defect and
19 associated safety risk were material to owners and lessees of the Class Vehicles and were
20 not known or reasonably discoverable by Plaintiffs and members of the Classes before
21 they purchased or leased Class Vehicles, or before the warranties on their Class Vehicles
22 expired.

1 35. Notwithstanding Defendant's exclusive and superior knowledge of the
2 Exhaust Fume Defect, Defendant failed to disclose the defect to consumers at the
3 time of purchase or lease of the Class Vehicles (or any time thereafter) and continued to sell
4 Class Vehicles. Defendant intentionally concealed the Exhaust Fume Defect and associated
5 safety hazard, failed to provide any notice of the defect and associated safety hazard to
6 Plaintiffs and members of the Classes, and have failed to recall the vehicles to remedy the
7 defect.

8 1. NHTSA Complaints & Investigation

9 36 Consumers who drove, purchased or leased Class Vehicles have filed numerous
10 complaints with NHTSA, reporting and detailing the Exhaust Fume Defect.

11 37. State and Federal law requires Ford to monitor defects which can cause a safety issue
12 and report them within five (5) days. Ford regularly monitors NHTSA complaints in order to
13 meet its reporting requirements under federal law and was provided knowledge of the defect
14 through these complaints, inter alia.

15 38. Below is a sample of consumer complaints made to NHTSA:

16 2016 FORD EXPLORER NHTSA ID Number: 11011850

17 Incident Date August 25, 2016

18 Consumer Location KINGSTON, PA

19 I FELL ASLEEP FROM CARBON MONOXIDE POISONING AND I HIT THREE
20 OTHER CARS CAUSING ME TO TOTAL MY VEHICLE. WEEKS BEFORE I HAD THE
21 ACCIDENT I WAS EXPERIENCING DROWSINESS AND HEADACHES. I HAD THIS
22 VEHICLE LESS THAN TWO MONTHS.

1 NHTSA ID Number: 11011757

2 Incident Date August 1, 2016

3 Consumer Location MARSHFIELD, MO

4 EXHAUST SMELL IN CABIN UPON HARD ACCELERATION OR HILL CLIMBING.
5 PROBLEM OCCURS ANY TIME RPMS EXCEED 3000-3500 FOR
6 MORE THAN A FEW SECONDS. WIDE OPEN THROTTLE IS NOT
7 REQUIRED, JUST MODERATE ENGINE STRAIN IN NORMAL DRIVING
8 CONDITIONS. EXHAUST SMELL SEEMS TO COME THROUGH A/C VENTS AND IS
9 WORSE WITH SYSTEM ON RECIRCULATE, BUT IS DEFINITELY PRESENT WHEN
10 SYSTEM IS SET TO FRESH AIR AS WELL.

11 REAR A/C SYSTEM DOES NOT HAVE TO BE ON IN ORDER TO GET THE SMELL.
12 EXHAUST SMELL IS BAD ENOUGH TO BURN YOUR THROAT IF
13 NOT VENTED BY ROLLING DOWN WINDOWS QUICKLY. PERSONS IN BACK
14 SEAT COMMONLY COMPLAIN OF HEADACHES WHEN RIDING IN THE VEHICLE.
15 VEHICLE HAS BEEN TO THE DEALER A TOTAL OF 5
16 TIMES FOR REPAIRS. NONE HAVE CORRECTED THE ISSUE. TSBS 14-
17 0130 HAS BEEN PERFORMED, MUFFLERS HAVE BEEN REPLACED, HVAC
18 MODULE HAS BEEN UPDATED, BUT PROBLEM STILL PERSISTS
19 AS BAD OR WORSE THAN EVER. VEHICLE WAS PURCHASED BRAND
20 NEW. PROBLEM BEGAN AROUND 1,500 MILES. THERE HAVE BEEN NO AFTER-
21 MARKET MODIFICATIONS TO THE VEHICLE.

22
23 COMPLAINT - 13

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1 NHTSA ID Number: 11011538

2 Incident Date June 1, 2016

3 Consumer Location SANTA ANA, CA

4 I BELIEVE C0 IS LEAKING INTO MY CAR AND WHILE DRIVING I HAVE BECOME
5 DIZZY AND GET HEADACHES ON A REGULAR BASIS. I ALSO BECOME QUITE
6 TIRED. I DRIVE FOR A LIVING AND DID NOT
7 UNDERSTAND WHAT WAS HAPPENING. THIS USUALLY HAPPENS WHILE
8 DRIVING ON THE HIGHWAY WITH MY WINDOWS CLOSED. I NEVER DRIVE
9 WITH MY WINDOWS OPEN BUT NEED TO OPEN THEM TO GET RID OF THE
10 DIZZY AND TIRED FEELING.

11
12 NHTSA ID Number: 11011420

13 Incident Date July 29, 2017

14 Consumer Location PIKEVILLE, NC

15 WHILE ACCELERATING A WEIRD SMELL FILLS THE CABIN OF MY EXPLORER.
16 OTHER PEOPLE SMELL IT AS WELL NOT JUST ME. SOMETIMES AFTER DRIVING
17 FOR MORE THAN 30 MINUTES I GET A HEADACHE OR I AM DIZZY.

18
19 NHTSA ID Number: 11010426

20 Incident Date April 20, 2017

21 Consumer Location CHESHIRE, CT

1 THE CAR PRODUCES A ROTTEN EGG SULFUR SMELL IN THE PASSENGER
2 CABIN WHILE ACCELERATING THE ENGINE UNDER
3 MODERATE TO HEAVY LOAD. THE FUMES ARE DANGEROUS AND YOU HAVE
4 TO OPEN ALL THE WINDOWS TO VENT THE SMELL FROM THE PASSENGER
5 CABIN OR I BECOME DIZZY AND LIGHTHEADED FROM THE FUMES. THERE IS
6 DEFINITELY AN EXHAUST LEAK THAT IS COMING INTO THE PASSENGER
7 CABIN WHEN THE CAR ACCELERATES UNDER LOAD.

8
9 NHTSA ID Number: 11000679

10 Incident Date July 15, 2016

11 Consumer Location HUTTO, TX

12 I HAVE BEEN TAKING THIS VEHICLE INTO THE DEALERSHIP MANY TIMES
13 SINCE JULY 2016 FOR AN EXHAUST SMELL IN THE CABIN WHEN
14 ACCELERATING AND AT HIGH SPEEDS AND CONSTANTLY FEEL DIZZY AND
15 NAUSEOUS WHEN DRIVING THE VEHICLE. I HAVE TRIED MULTIPLE
16 DEALERSHIPS TO FIX AND THEY HAVE TRIED ALL THE TSB'S THAT APPLY TO
17 THE 2011-15'S, BUT SEEM TO NOT WORK

18 ON THE 2016. THEY HAVE RESEALED THE VEHICLE AT LEAST 3 TIMES,
19 REPLACED THE EXHAUST SYSTEM, AND OTHER PARTS, AND WHO
20 KNOWS WHAT ELSE THEY'VE TRIED, BUT STILL WITH NO
21 RESOLUTION. I'M TAKING IT BACK TO THE DEALERSHIP YET AGAIN
22 TOMORROW, BUT REFUSE TO TAKE THIS VEHICLE BACK HOME UNTIL

23 COMPLAINT - 15

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1 THE SMELL IS COMPLETELY GONE, WHICH SEEMS TO BE AN IMPOSSIBLE FEAT
2 AT THIS POINT. I HAVE A CASE OPEN WITH FORD, BUT HAVE NOT NOT MADE
3 ANY PROGRESS WITH THEM EITHER
4 (OVER 6 WEEKS). PLEASE DO WHAT YOU CAN TO GET THEM TO MAKE A
5 RECALL ASAP BEFORE I BECOME ONE OF THOSE SOCCER MOMS THAT PASSES
6 OUT BEHIND THE WHEEL WITH HER KIDS AND DOGS IN
7 THE CAR AND THEY MAKE A LIFETIME MOVIE ABOUT HOW MY HUSBAND
8 CAN NO LONGER LIVE WITHOUT US :)

9
10 NHTSA ID Number: 10956121

11 Incident Date February 3, 2017

12 Consumer Location CANYON COUNTRY, CA

13 WHILE DRIVING THE CAR ON THE FREEWAY AND UNDER ACCELERATION
14 THERE IS A HORRIBLE EXHAUST SMELL THAT MAKES MY KIDS AND MYSELF
15 NAUTIOUS. IT ALSO GIVES ME

16 CONSTANT HEADACHES. I DIDN'T REALIZE WHAT WAS HAPPENING UNTIL MY
17 HUSBAND GOT IN THE CAR FOR THE FIRST TIME AND
18 NOTICED THE EXHAUST SMELL

19
20 NHTSA ID Number: 10954621

21 Incident Date June 2, 2016

22 Consumer Location STRABANE, PA

23 COMPLAINT - 16

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1 SEVERAL TIMES WHEN DRIVING TWO OF MY CHILDREN AGES 2 AND
2 10 COMPLAINED OF A BAD SMELL COMING FROM THE THIRD ROW SEATING.
3 THEY BOTH BECAME STRANGELY ILL, BUT ONLY MY 2YO BEGAN VOMITING.
4 MY 10 TO COMPLAINED OF BEING LIGHT HEADED DURING SEVERAL LONG
5 TRIPS. I NOTICED ON MANY OCCASIONS
6 THAT DURING HIGH ACCELERATION ANYONE THAT SITS IN THE THIRD ROW
7 COMPLAINS OF STOMACH ACHES AFTER A LENGTHY TIME IN THE VEHICLE. I
8 CHALKED IT UP TO CAR SICKNESS, BUT REMEMBERED THIS ONLY BECAME
9 RELEVANT WHEN LEASING THIS FORD. PLEASE HELP US. I HAVE THREE KIDS
10 AND NO OTHER VEHICLE. THIS ALL STARTED THIS PAST SUMMER.

11
12 NHTSA ID Number: 10943721

13 Incident Date October 3, 2016

14 Consumer Location MOUNT HOREB, WI

15 SINCE EARLY OCTOBER 2016, I'VE HAD A NEAR-CONSTANT EXHAUST SMELL,
16 SIMILAR TO WHAT NATURAL GAS OR SULFUR SMELLS LIKE,
17 IN THE CABIN OF MY VEHICLE THAT IS RESULTING IN HEADACHES
18 (LITERALLY) FOR MY ENTIRE FAMILY. DEALERSHIP HAS MADE MULTIPLE
19 ATTEMPTS TO REPAIR AND HAS BEEN UNSUCCESSFUL. THE EXHAUST FUMES
20 ARE COMING INTO THE CABIN WHEN THE

21
22
23 COMPLAINT - 17

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1 ENGINE IS STARTED AND VEHICLE IS PARKED OR MOVING. IN MY ONLINE
2 RESEARCH, I'VE FOUND THAT FORD IS UNDER INVESTIGATION BY NHTSA FOR
3 THIS ISSUE FOR 2010-15 MODELS, BUT I BELIEVE MY 2016 MODEL IS AFFECTED
4 AS WELL.

6 2017 FORD EXPLORER NHTSA ID Number: 11011969

7 Incident Date June 1, 2017

8 Consumer Location RICHMOND, TX

9 EXHAUST ODOR SMELL, AS SOON AS CAR SPEEDS UP ABOVE THE 40
10 MPH, IT STARTS SMELLING EXHAUST IN THE CAR. SMELL IS SO STRONG THAT
11 CAUSE HEADACHE. THIS IS POISON CARBON MONOXIDE.

13 NHTSA ID Number: 11012195

14 Incident Date November 1, 2016

15 Consumer Location BAINBRIDGE, GA

16 ODOR WHICH MAKES ME NAUSEA AND HAVE A HEADACHE

18 NHTSA ID Number: 11011868

19 Incident Date July 31, 2017

20 Consumer Location SHERMAN OAKS, CA

1 FORD EXPLORER SPORT 2017 SMELLS OF EXHAUST GAS IN THE DRIVER
2 CABIN. I BOUGHT THE CAR IN MARCH 5, 2017 AND TOOK IT TO DEALER 3/9/17
3 TO COMPLAIN ABOUT EXHAUST FUMES SMELL

4 WHEN I DROVE ON THE FREEWAY. THEY TOLD ME THEY TESTED IT AND
5 COULD NOT SMELL ANYTHING. THE PROBLEM HAS CONTINUED AND IT
6 HAPPENS ESPECIALLY WHEN I DRIVE ON THE FREEWAY. IN JUNE A WAS
7 GOING TO DRIVE MY CAR FROM LA TO NEW JERSEY.

8 AFTER THREE DAYS OF DRIVING I HAD TO TURN BACK TO LA BECAUSE I GOT
9 DIZZY AND FELT NAUSEOUS EVERY DAY AFTER DRIVING 6 TO 8 HOURS. I SAW
10 LAST NIGHT ON THE NEWS THAT

11 THERE IS A PROBLEM WITH EXHAUST FUMES AND CARBON MONOXIDE AND
12 THAT MADE ME REALIZE THAT I AM AFFECTED BY THAT. I CALLED FORDS
13 HOTLINE EARLIER TODAY. THEY SAID THAT THERE IS A FIX BUT WHEN I TOOK
14 IT TO THE DEALERSHIP THEY TOLD ME THAT APPARENTLY THERE IS NO FIX
15 FOR THE 2017 YET AND I GOT THE ADVISE TO BE CAREFULL AND DRIVE WITH
16 MY WINDOW DOWN. THAT IS NOT THE SOLOUTING YOU WANT AFTER PAYING
17 55G AND HAVING ONLY 3500MILLES ON THE ODOMETER!

18
19 NHTSA ID Number: 11011802

20 Incident Date July 15, 2017

21 Consumer Location BROOKLYN, NY
22

1 EVERY TIME GAS IS PUSHED AT FULL THROTTLE THERE IS A SMELL OF
2 EEXHAUST IN THE CABIN OF THE CAR , THIS IS A NEW CAR JUST
3 PURCHASED , MY TWO KIDS VOMITED AND DON'T WANNA RIDE IN IT THIS IS
4 NOT A JOKE AT ALL .

5
6 NHTSA ID Number: 11010888

7 Incident Date July 26, 2017

8 Consumer Location PASADENA, MD

9 VEHICLE IN MOTION- CARBON MONOXIDE DETECTOR READING OF 45
10 PPM (PARTS PER MILLION). PASSENGERS COMPLAINING OF HEADACHES,
11 NAUSEA, LIGHTHEADEDNESS WHICH PROMPTED THE USE OF THE METER.

12
13 NHTSA ID Number: 10979869

14 Incident Date April 18, 2017

15 Consumer Location GREAT RIVER, NY

16 ON JANUARY 27TH, 2017, MY WIFE AND I LEASED A NEW 2017 FORD
17 EXPLORER. EVERY TIME WE OPERATE THE VEHICLE, WE GET
18 EXTREMELY SICK (SOME SYMPTOMS WE EXPERIENCE ARE SORE THROAT,
19 RUNNING NOSE, HEADACHES, AND NAUSEA THAT LAST HOURS AFTER
20 EXITING THE VEHICLE). THIS OCCURS ABOUT 10-15
21 MINUTES WHILE DRIVING/OPERATING THE VEHICLE. THE HEATING

1 SYSTEM WAS SET TO 75 DEGREES FAHRENHEIT AND THE WINDOWS WERE
2 CLOSED. AFTER WE FELT SICK WE DID SHUT OFF THE HEATING SYSTEM AND
3 OPEN THE WINDOWS BUT THERE WAS A SLIGHT ODOR IN THE CABIN AND WE
4 STILL FEEL SEVERAL ALIMENTS. DOCTOR APPOINTMENTS HAVE BEEN MADE
5 FOR MYSELF AND MY 6-MONTH- OLD DAUGHTER THAT WAS IN THE VEHICLE
6 (THIS BEING MY MOST SIGNIFICANT CONCERN). FORD MOTOR CORP
7 INSTALLED A NEW EXHAUST SYSTEM, REMOVED THE REAR BUMPER AND
8 RESEALED ANY LEAKS, CHECKED CABIN PRESSURE AND TRIED TO RESEAL
9 ANY CRACKS THAT MAY ALLOW EXHAUST TO RENTER THE CABIN. FORD
10 STATED THAT THE VEHICLE WAS FIXED, AFTER BEING BROUGHT TO THEM
11 FOR THE THIRD TIME (THEY SAID THEY FOUND MORE LEAKS AND RESEALED
12 THEM), BUT REFUSED TO GIVE ME ANY DOCUMENTATION STATING THAT THE
13 VEHICLE IS SAFE FOR MY FAMILY AND MYSELF TO BE IN. THE VEHICLE HAS
14 BEEN IN AND OUT OF SERVICE SEVERAL TIMES, A FORD SERVICE TECHNICIAN
15 LOCATED AT SAYVILLE FORD TEST DROVE THE VEHICLE WITH ME AND
16 CONFIRMED THE SAME AILMENTS. THE VEHICLE WAS PICKED UP FROM
17 SERVICE AFTER FORD STATED IT WAS FIXED FOR A 3RD TIME AND WE WERE
18 STILL GETTING SICK WHEN WE DROVE THE VEHICLE. WE CONTACTED FORD
19 AGAIN AND WE ADVISED THEM OF THE SITUATION FOR A 4TH TIME AND
20 THEIR RESPONSE WAS "BY ITS VERY NATURE, NEW CAR SMELL IS DUE TO
21 PLASTICS AND ADHESIVES IN THE VEHICLE. IT COULD BE AN IRRITANT TO
22
23

1 SOME. UNFORTUNATELY, YOU MAY HAVE TO CONSIDER OTHER OPTIONS
2 THAT MAY BE AVAILABLE TO YOU.
3

4 39. According to NHTSA, it initially opened an investigation into “exhaust odors in the
5 vehicle occupant compartment of model year (MY) 2011 to 2015 Ford Explorers” in July
6 2016. During its investigation, NHTSA’s Office of Defects Investigation (ODI) identified
7 hundreds of additional complaints concerning exhaust odor and in July 2017 expanded its
8 inquiry to cover the Class Vehicles. As of July 27, 2017, NHTSA received 791 complaints of
9 exhaust odor in 2011-2017 Ford Explorers, including complaints concerning Police
10 Interceptor Ford Explorers.
11

12 39. During its investigation, NHTSA sent Ford an Information Request letter, and in
13 response, Ford identified “2400 reports (485 owner complaints, 1254 warranty claims, 606
14 dealer field reports, 55 legal claims), involving 2,051 unique vehicles, that appear to relate to
15 the exhaust odor issue” in Ford Explorers. “A number of the Ford reports also discussed
16 health effects similar to the [NHTSA complaints], specifically nausea and headaches.”⁷

17 40. According to NHTSA, “Ford has issued multiple TSBs related to the exhaust odor issue,
18 and in some cases revised those documents multiple times to provide dealership technicians
19 with procedures to address complaints raised by consumers and police fleets. Concerns over
20 the effectiveness of the procedures have been raised by vehicle owners in some cases.”

21 NHTSA continues to evaluate the effectiveness of Ford’s TSBs.
22

1 41. With respect to the Ford Explorer Police Interceptor, NHTSA reports that these vehicles
2 may be “experiencing exhaust manifold cracks, which appear to present a low level of
3 detectability, and may explain the exhaust odor.” NHTSA does not indicate whether this
4 same condition is present in the other Ford Explorers subject to its investigation.

5 2. Technical Service Bulletins
6

7 42. As referenced by NHTSA, Ford has issued TSBs for Ford Explorers that concern the
8 presence of exhaust fumes in the passenger compartment. Such TSBs, which evidence
9 Defendant’s exclusive and superior knowledge regarding the defect in earlier models and
10 which implicate the same problem as present in the Class Vehicles, were issued to its
11 exclusive network of dealerships beginning on or around December 2012.

12 43. In December 2012, Ford issued TSB 12-12-4, which provided instructions to Ford
13 dealerships to remedy the presence of exhaust fumes in 2011, 2012 and 2013 Ford Explorers.

14 44. In July 2014, Ford issued TSB 14-0130, which superseded TSB 12-12-4 and included
15 2014 and 2015 Ford Explorers.

16 45. According to TSB 14-0130, “[s]ome 2011-2015 Explorer vehicles may exhibit an
17 exhaust odor in the vehicle with the auxiliary climate control system on. Customers may
18 indicate the odor smells like sulfur.” On July 28, 2017, Ford issued a statement claiming that
19 “holes and unsealed spaces” in the rear of Police Interceptor Ford Explorers may allow
20 exhaust to enter the cabin. Ford stated, however, that “[d]rivers of regular, non- police Ford
21 Explorers have no reason to be concerned.”

22 <https://media.ford.com/content/fordmedia/fna/us/en/news/2017/07/28/police->

1 utility-statement.html (last visited Aug. 7, 2017) (“July 28, 2017 Ford Statement”).

2 10 Exhibit G, Exhaust Odor in Vehicle, TSB 14-0130.

3 46. TSB 14-0130 did not identify a specific remedy for the presence of exhaust fumes,
4 instead suggesting several distinct modifications/replacements. In particular, TSB 14-0130
5 suggested the following:

- 6 • Reprogramming the HVAC System;
- 7 • Replacing the left side rear air extractor;
- 8 • Inspecting for the presence of drain valves and installing new drain valves;
- 9 • Sealing the rear horizontal sheet metal lap joints and the rear sheet metal overlap flange;
- 10 and
- 11 • Applying undercoating to the auxiliary air conditioning lines and sealed areas.¹¹

12
13 47. This scattershot approach demonstrates that Ford knew of the defect in earlier model
14 Ford Explorers, but did not know of a specific and effective fix to protect car occupants from
15 exposure to exhaust fumes. Neither TSB 12-12-4 nor TSB 14-0130 acknowledged the
16 presence of carbon monoxide in the passenger compartment, nor did it acknowledge that
17 carbon monoxide was being sucked into the passenger compartments due to their defects in
18 design.

19 48. Based on NHTSA’s report and upon information and belief, both TSB 12-12-4 and TSB
20 14-0130 failed to remedy the defect present in earlier model Ford Explorers. Similarly,
21 upon information and belief, the suggested modifications/replacements in TSB 12-12-4 and
22 TSB 14-0130 do not sufficiently remedy the Exhaust Fume Defect in the Class Vehicles.

1 49. Plaintiffs were never provided with copies of or information about TSB 12-12-4 and
2 TSB 14-0130, and to the extent that Ford has issued subsequent TSBs that include the Class
3 Vehicles, Plaintiffs have never been provided with copies.

4 50. Further, upon information and belief, the TSBs were not directly communicated to
5 consumers, first responders like Plaintiffs and other emergency personnel whose daily driver
6 was the class vehicle. Thus, despite Ford's knowledge of the defect and associated safety
7 hazard, Defendant failed to disclose the defect to drivers, police officers, owners and lessors
8 of the Class Vehicles, including Plaintiffs and members of the Classes, and instead,
9 intentionally concealed the Exhaust Fume Defect.

10 51. The TSBs, along with pre-production testing, pre-production design failure mode and
11 analysis data, production design failure mode and analysis data, early consumer complaints
12 made to Defendant's network of exclusive dealers and NHTSA, aggregate warranty data
13 compiled from those dealers, repair order and parts data received from the dealers, and
14 testing performed in response to consumer complaints, evidences that since as early as
15 2012, Defendant has had exclusive and superior knowledge regarding the defect in earlier
16 model Ford Explorers – the same defect present in the Class Vehicles.

17
18 52. Defendant gained its knowledge of the Exhaust Fume Defect through sources not
19 available to Plaintiffs and members of the Classes.

20 3. Prior Class Litigation
21
22

1 53. In late 2016, Ford settled a class action litigation, Sanchez Knutson v. Ford Motor Co.,
2 No. 14-cv-61344-WPD (S.D. Fla.), which alleged a defect identical to the Exhaust Fume
3 Defect – “exhaust and other gases, including dangerous quantities of carbon monoxide may
4 enter the passenger compartments of the vehicles” for 2011-2015 Ford Explorers.

5 54. The settlement provided for the following consideration to affected car owners: (1)
6 Notice of a New Exhaust Odor TSB, which was to be issued in
7 2016 and which provided an updated procedure to address exhaust fumes in the passenger
8 compartment; and (2) Reimbursement of out of pocket expenses related to repairs conducted
9 within or without the warranty period.

10 55. Plaintiffs and Class members did not receive any notice or remedy for the Exhaust
11 Fume Defect, despite its clear similarity to the problem in model years 2011-2015.

12
13 V. TOLLING OF THE STATUTE OF LIMITATIONS AND ESTOPPEL

14
15 56. Any applicable statute of limitations has been tolled by Defendant’s knowing and
16 active concealment of the defect and the omissions alleged herein. Through no fault or lack of
17 diligence, Plaintiffs and members of the Classes were deceived regarding the Class Vehicles
18 and could not reasonably discover the defect or Defendant’s deception with respect to the
19 Exhaust Fume Defect.

20 57. Plaintiffs and members of the Classes did not discover and did not know of any facts
21 that would have caused a reasonable person to suspect that Defendant was concealing a defect
22 and/or that the Class Vehicles contained the defect and corresponding safety hazard. As

1 alleged herein, the existence of the defect was material to Plaintiffs and members of the
2 Classes at all relevant times. Within the time period of any applicable statutes of limitations,
3 Plaintiffs and members of the Classes could not have discovered through the exercise of
4 reasonable diligence that Defendant was concealing the Exhaust Fume Defect.

5 58. At all times, Defendant is and was under a continuous duty to disclose to Plaintiffs and
6 members of the Classes the true standard, quality and grade of the Class Vehicles and to
7 disclose the defect which resulted in the presence of exhaust fumes, including carbon
8 monoxide, in the passenger compartment.

9 59. Defendant knowingly, actively and affirmatively concealed the facts alleged herein.
10 Plaintiffs and members of the Classes reasonably relied on Defendant's knowing, active and
11 affirmative concealment.

12 60. For these reasons, all applicable statutes of limitation have been tolled based on the
13 discovery rule and Defendant's fraudulent concealment, and Defendant is estopped from
14 relying on any statutes of limitations in defense of this action.

15 16 VI. CLASS ACTION ALLEGATIONS

17 61. Plaintiffs bring this action pursuant to CR 23

18 Washington State Class: All persons or entities in the State of Washington who purchased,
19 leased, drove or own a Class Vehicle (the "State Class"). Classification as a class is
20 appropriate because

21 (1) the class is so numerous that joinder of all members is impracticable; (2) there are
22 questions of law or fact common to the class; (3) the claims or defenses of the representative

1 parties are typical of the claims or defenses of the class; and (4) the representative parties will
2 fairly and adequately protect the interests of the class.

3
4 (b) Class Actions Maintainable. An action may be maintained as a class action if the
5 prerequisites of section (a) are satisfied, and in addition:

6 (1) The prosecution of separate actions by or against individual members of the class would
7 create a risk of:

8 (A) inconsistent or varying adjudications with respect to individual members of the
9 class which would establish incompatible standards of conduct for the party opposing the
10 class, or

11 (B) adjudications with respect to individual members of the class which would as a
12 practical matter be dispositive of the interests of the other members not parties to the
13 adjudications or substantially impair or impede their ability to protect their interest; or

14
15 (2) The party opposing the class has acted or refused to act on grounds generally
16 applicable to the class, thereby making appropriate final injunctive relief or corresponding
17 declaratory relief with respect to the class as a whole;

18 62. Excluded from the Class are Defendant and its parents, subsidiaries and corporate
19 affiliates. Plaintiffs reserve the right to revise the definition of the Class based upon
20 subsequently discovered information and reserve the right to establish additional subclasses
21 where appropriate.

1
2 63. Common questions of law and fact exist as to all members of the Classes and
3 predominate over any issues solely affecting individual members of the Classes. The
4 common and predominating questions of law and fact include, but are not limited to:

- 5 • Whether the Class Vehicles contains a design defect and/or a defect in material,
6 manufacturing and/or workmanship;
- 7 • Whether the defect in the Class Vehicles presents a safety hazard;
- 8 • Whether Defendant knew or should have known that defect in the
9 Class Vehicles presents a safety hazard;
- 10 • Whether Defendant had a duty to disclose defect in the Class
11 Vehicles;
- 12 • Whether Defendant breached its duty to disclose defect in the Class
13 Vehicles;
- 14 • Whether Defendant intentionally and knowingly concealed, suppressed and/or
15 omitted material facts concerning the standard, quality or grade of the Class Vehicles
16 and/or the Exhaust Fume Defect;
- 17 • Whether Defendant negligently omitted material facts concerning the standard, quality or
18 grade of the Class Vehicles and/or the Exhaust Fume Defect;
- 19 • Whether Defendant made material omissions concerning the standard, quality or grade
20 of the Class Vehicles and/or the Exhaust Fume Defect;
- 21 • Whether members of the Classes would pay less for a Class Vehicle if
22 Defendant, at the time of purchase or lease, disclosed the defect;

- 1 • Whether members of the Classes would have purchased or leased a Class Vehicle if
- 2 Defendant, at the time of purchase or lease, disclosed the defect;
- 3 • Whether Defendant actively concealed material facts from Plaintiff and members of the
- 4 Classes in order to, inter alia, sell more Class Vehicles;
- 5 • Whether Defendant breached its express and/or implied warranties to
- 6 Plaintiffs and members of the Classes;
- 7 • Whether Defendant violated the Magnuson-Moss Warranty Act, 15
- 8 U.S.C. § 2301, et seq.;
- 9 • Whether Defendant violated RCW 7.72
- 10 • Whether Defendant was unjustly enriched by its conduct; and
- 11 • Whether damages, restitution, equitable, injunctive, compulsory, or other relief is
- 12 warranted.

13 64. Plaintiffs' claims are typical of the claims of the Classes that Plaintiffs seek to
14 represent. As alleged herein, Plaintiffs and the Classes sustained damages arising out of the
15 same illegal actions and conduct by Defendant.

16 65. Plaintiffs are willing and prepared to serve the Classes in a representative
17 capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and
18 adequately protect the interests of the Classes and has no interests adverse to or in conflict
19 with the interests of the other members of the Classes.

20 66. Plaintiffs' interests are co-extensive with and are not antagonistic to those of absent
21 members within the Classes. Plaintiffs will undertake to represent and protect the interests of
22 absent members within the Classes and will vigorously prosecute this action.

1 67. Plaintiffs have engaged the services of the undersigned counsel., will adequately
2 prosecute this action, and will assert and protect the rights of, and otherwise represent,
3 Plaintiffs and absent members of the Classes.

4 68. A class action is superior to all other available methods for the fair and efficient
5 adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the
6 management of this litigation that would preclude its maintenance as a class action.

7 69 Class action status is warranted under CR 23 because questions of law or fact common
8 to the members of the Classes predominate over any questions affecting only individual
9 members, and a class action is superior to other available methods for the fair and efficient
10 adjudication of this controversy.

11 70. The interest of members within the Classes in individually controlling the
12 prosecution of separate actions is theoretical and not practical. The Classes have a high
13 degree of similarity and are cohesive, and Plaintiffs anticipate no difficulty in the management
14 of this matter as a class action.

15 71. The nature of notice to the proposed Classes is contemplated to be by direct mail upon
16 certification of the Classes or, if such notice is not practicable, by the best notice practicable
17 under the circumstance including, inter alia, email, publication in major newspapers and/or on
18 the internet.

19 **VII. CLAIMS FOR RELIEF**

20 **COUNT I Fraud Fraudulent Concealment**

21 **(On behalf of the Class or, alternatively, on behalf of the Named Plaintiffs)**

1 72. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
2 herein.

3 73. Plaintiffs bring this count on behalf of themselves and the members of the Class or,
4 alternatively, on behalf of the named Plaintiffs.

5 74. Defendant intentionally and knowingly concealed, suppressed and/or omitted material
6 facts including the standard, quality or grade of the Class Vehicles and the presence of the
7 Exhaust Fume Defect installed in the Class Vehicles, which exposes drivers and occupants to
8 noxious gases, fumes and odors and/or an associated safety hazard from same, with the intent
9 that Plaintiffs and members of the Classes rely on Defendant's omissions. As a direct result
10 of Defendant's fraudulent conduct, members of the Classes have suffered actual damages.

11 75. Defendant knew (at the time of sale or lease and thereafter) that the Class Vehicles
12 contained Exhaust Fume Defect, concealed the defect, and never intended to repair or replace
13 the Exhaust Fume Defect during the warranty periods. To date, Defendant has not provided
14 Plaintiffs or members of the Classes with a repair or remedy that will eliminate Exhaust Fume
15 Defect.

16 76. Defendant owed a duty to disclose the Exhaust Fume Defect and its corresponding
17 safety hazard to Plaintiffs and members of the Classes because Defendant possessed superior
18 and exclusive knowledge regarding the defect. Rather than disclose the defect, Defendant
19 intentionally and knowingly concealed, suppressed and/or omitted material facts including the
20 standard, quality or grade of the Class Vehicles and the presence of the Exhaust Fume Defect,
21 to sell additional Class Vehicles and avoid the cost of repair or replacement.

1 77. The fact that the Exhaust Fume Defect exposes drivers and occupants to dangerous
2 gases including carbon monoxide is material because Plaintiffs and members of the Classes
3 had a reasonable expectation that the vehicles would not expose them and other vehicle
4 occupants to such a safety hazard. No reasonable consumer expects a vehicle to be designed,
5 manufactured and assembled such that exhaust fumes are present in the passenger
6 compartment while driving.

7 78. Plaintiffs and members of the Classes would not have operated the Class Vehicles but
8 for Defendant's omissions and concealment of material facts regarding the nature and quality
9 of the Class Vehicles and existence of the Exhaust Fume Defect.

10 79. Defendant knew its concealment and suppression of material facts were false and
11 misleading and knew the effect of concealing those material facts. Defendant knew its
12 concealment and suppression of the Exhaust Fume Defect

13 80. Defendant acted with malice, oppression and fraud.
14

15 81. Plaintiffs and members of the Classes reasonably relied upon Defendant's knowing
16 concealment and omissions. As a direct and proximate result of Defendant's omissions and
17 active concealment of material facts regarding the Exhaust Fume Defect and associated safety
18 hazard, Plaintiffs and members of the Classes have suffered actual damages in an amount to
19 be determined at trial.

20 ///

21 ///

COUNT II Negligent Misrepresentation

On behalf of the Class or, alternatively, on behalf of the Named Plaintiffs

82. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth herein.

83. Plaintiffs bring this count on behalf of themselves and the members of the Class.

84. Defendant owed a duty to disclose the Exhaust Fume Defect and its corresponding safety hazard to Plaintiffs and members of the Classes because Defendant possessed superior and exclusive knowledge regarding the defect and the associated risks.

85. Defendant negligently omitted material facts including the standard, quality or grade of the Class Vehicles and the presence of the Exhaust Fume Defect in the Class Vehicles. As a direct result of Defendant's negligent conduct, members of the Classes have suffered actual damages.

86. The Exhaust Fume Defect is material because Plaintiffs and members of the Classes had a reasonable expectation that the vehicles would not suffer from a defect that would expose drivers and occupants to dangerous gases including carbon monoxide. No reasonable consumer expects a vehicle to present a defect that exposes drivers and occupants such a safety hazard.

87. Plaintiffs and members of the Classes would not have operated the Class Vehicles but for Defendant's negligent omissions of material facts regarding the nature and quality of the Class Vehicles and existence of the Exhaust Fume Defect, or would have paid less for the

1 Class Vehicles. Plaintiffs and members of the Classes justifiably relied upon Defendant's
2 negligent omissions of material facts.

3 88. As a direct and proximate result of Defendant's negligent omissions of material facts
4 regarding the standard, quality or grade of the Class Vehicles and/or the presence of the
5 Exhaust Fume Defect, Plaintiffs and members of the Classes have suffered an ascertainable
6 loss and actual damages in an amount to be determined at trial.

7
8 **COUNT III**

9 **Breach of Express Warranty**

10 **(On behalf of the Class or, alternatively, on behalf of the named Plaintiffs)**

11
12 89. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
13 herein.

14 90. Plaintiffs bring this count on behalf of themselves and the Class.

15 91. Defendant marketed the Class Vehicles as safe vehicles. Such representations formed
16 the basis of the bargain in Plaintiffs' and members of the Classes' decisions to purchase, lease,
17 operate or ride in the Class Vehicles.

18 92. Defendant is and was at all relevant times a merchant and seller of motor vehicles
19 within the meaning of the Uniform Commercial Code.

20 93. With respect to leases, Defendant is and was at all relevant times a lessor of motor
21 vehicles within the meaning of the Uniform Commercial Code.

1 94. The Class Vehicles are and were at all relevant times goods within the meaning of the
2 Uniform Commercial Code.

3 95. In connection with the purchase or lease of each of the Class Vehicles, Defendant
4 provides New Vehicle Limited Warranty coverage for the Class Vehicles for 3 years or
5 36,000 miles which includes all components other than normal wear and maintenance items.
6 Under the warranties provided to Plaintiffs and members of the Classes, Defendant promised
7 to repair or replace covered components arising out of defects in materials and/or
8 workmanship, including the Exhaust Fume Defect, at no cost to owners and lessees of the
9 Class Vehicles and within a reasonable time. As alleged herein, Defendant breached these
10 warranties.

11 96. Defendant's warranties formed a basis of the bargain that was reached when members
12 of the Classes purchased, leased, operated or rode in their Class Vehicles.

13 97. Plaintiffs and members of the Classes experienced the existence of the Exhaust Fume
14 Defect within the warranty periods but had no knowledge of the existence of the defect and
15 associated safety hazard, which were known and concealed by Defendant. Despite the
16 existence of the warranties, Defendant failed to adequately inform Plaintiffs and members of
17 the Classes that the Class Vehicles contained the Exhaust Fume Defect and failed to provide a
18 suitable remedy or repair free of charge within a reasonable time.

19 98. Defendant breached the express warranty promising to repair and correct a
20 manufacturing defect or defect in materials or workmanship of any parts it supplied.
21
22

1 99. On information and belief, Defendant has not suitably repaired or replaced the Exhaust
2 Fume Defect free of charge for Plaintiffs and members of the Classes despite the existence of
3 the defect in the Class Vehicles at the time of sale or lease.

4 100. Defendant was provided notice of the Exhaust Fume Defect by numerous consumer
5 complaints made to their authorized dealers nationwide, complaints to NHTSA, and through
6 their own testing. Affording Defendant a reasonable opportunity to cure its breach of written
7 warranties would be unnecessary and futile here because Defendant has known of and
8 concealed the Exhaust Fume Defect and has failed to provide a suitable repair or replacement
9 of the Exhaust Fume Defect free of charge within a reasonable time.

10 101. Any attempt by Defendant to disclaim or limit recovery to the terms of the express
11 warranties is unconscionable and unenforceable here. Specifically, Defendant's warranty
12 limitation is unenforceable because it knowingly sold or leased a defective product without
13 informing consumers about the defect. The limits contained in Defendant's warranty periods
14 were also unconscionable and inadequate to protect Plaintiffs and members of the Classes.
15 Among other things, Plaintiffs and the members of the Classes did not determine these
16 limitations, the terms of which unreasonably favored Defendant. Defendant knew or should
17 have known that the Class Vehicles were defective at the time of sale or lease and that the
18 Exhaust Fume Defect posed a safety hazard.

19 102. Further, the limited warranty promising to repair and/or correct a manufacturing defect
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs
21 and members of the Classes whole because, on information and belief, Defendant has failed
22 and/or has refused to adequately provide the promised remedies within a reasonable time.

1 103. Defendant knew that the Class Vehicles were inherently defective and did not conform
2 to their warranties, and Plaintiffs and members of the Classes were induced to purchase, lease,
3 drive or ride in the Class Vehicles under false and/or fraudulent pretenses.

4 104. As a direct and proximate result of Defendant's breach of express warranties, Plaintiffs
5 and members of the Classes have been damaged in an amount to be determined at trial.

6 105. Because of Defendant's breach of express warranty as set forth herein, Plaintiffs and/or
7 members of the Classes may assert, as additional and/or alternative remedies, the revocation
8 of acceptance of the goods and the return to Plaintiffs and members of the Classes of the
9 purchase or lease price of all Class Vehicles currently owned or leased, and for such
10 other incidental and consequential damages as allowed.

11 12 **COUNT IV**

13 **Breach of Implied Warranty of Merchantability, (On behalf of the Class or,** 14 **alternatively, on behalf of the named Plaintiffs)**

15 106. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
16 herein.

17 107. Plaintiffs bring this count on behalf of themselves and the Class.

18 108. Plaintiffs and/or members of the Classes purchased, leased, drove or rode in the Class
19 Vehicles from Defendant by and through Defendant's authorized agents for retail sales, or
20 were otherwise expected to be the eventual purchasers and/or users of the Class Vehicles
21 when bought from a third party. At all relevant times, Defendant was the manufacturer,
22

1 distributor, warrantor, and/or seller of Class Vehicles. Defendant knew or had reason to know
2 of the specific use for which the Class Vehicles were purchased or leased.

3 109. Defendant is and was at all relevant times a merchant and seller of motor vehicles
4 within the meaning of the Uniform Commercial Code.

5 110. With respect to leases, Defendant is and was at all relevant times a lessor of motor
6 vehicles within the meaning of the Uniform Commercial Code.

7 111. The Class Vehicles are and were at all relevant times goods within the meaning of the
8 Uniform Commercial Code.

9 112. Defendant impliedly warranted that the Class Vehicles were in merchantable condition
10 and fit for the ordinary purpose for which vehicles are used.

11 113. The Class Vehicles, when sold or leased and at all times thereafter, were not in
12 merchantable condition and were and are not fit for the ordinary purpose of providing safe and
13 reliable transportation, nor were they safe for the operation as a police vehicle. The Class
14 Vehicles contain an inherent defect – the Exhaust Fume Defect – (at the time of sale or lease
15 and thereafter) and present an undisclosed safety hazard to drivers and occupants. Thus,
16 Defendant breached its implied warranty of merchantability.

17 114. Defendant cannot disclaim its implied warranty as it knowingly sold or leased a
18 defective product.

19 115. Defendant was provided notice of the Exhaust Fume Defect by numerous consumer
20 complaints made to its authorized dealers nationwide, complaints to NHTSA, and through its
21 own testing. Affording Defendant a reasonable opportunity to cure its breach of implied
22 warranties would be unnecessary and futile here because Defendant has known of and

1 concealed the Exhaust Fume Defect and, on information and belief, has refused to repair or
2 replace Exhaust Fume Defect free of charge within a reasonable time.

3 116. As a direct and proximate result of Defendant's breach of the implied warranty of
4 merchantability, Plaintiffs and members of the Classes have been damaged in an amount to be
5 proven at trial.

6 117. Any attempt by Defendant to disclaim or limit the implied warranty of merchantability
7 vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendant's
8 warranty limitation is unenforceable because it knowingly sold or leased a defective
9 product without informing consumers about the defect. The limits contained in Defendant's
10 warranty periods were also unconscionable and inadequate to protect Plaintiffs and members
11 of the Classes. Among other things, Plaintiffs and members of the Classes did not determine
12 these limitations, the terms of which unreasonably favored Defendant. A gross disparity in
13 bargaining power existed between Defendant and some members of the Classes, and
14 Defendant knew or should have known that the Class Vehicles were defective at the time of
15 sale or lease and that the Exhaust Fume Defect posed a safety hazard.

16 118. Plaintiffs and/or members of the Classes have been excused from performance of any
17 warranty obligations as a result of Defendant's conduct described herein.

18 119. The applicable statute of limitations for the implied warranty claim has been tolled by
19 the discovery rule, fraudulent concealment and the terms of the express warranty.

20 ///

21 ///

COUNT V

Violation of the Magnuson-Moss Warranty Act ("MMWA"),

15 U.S.C. § 2301, et seq.

(On behalf of the Class or, alternatively, on behalf of the named Plaintiffs)

120. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth herein.

121. Plaintiffs bring this count on behalf of themselves and the Class.

122. Plaintiffs may satisfy the MMWA jurisdictional requirement because Plaintiffs allege diversity jurisdiction under CAFA, 28 U.S.C. § 1332(d)(2).

123. Plaintiffs and/or members of the Classes are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

124. Defendant is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

125. The Class Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

126. The MMWA provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty. See 15 U.S.C. § 2310(d)(1).

127. Defendant provided Plaintiffs and members of the Classes with one or more express warranties, which are covered under 15 U.S.C. § 2301(6).

1 Specifically, Defendant provided a warranty for 3 years or 36,000 miles which includes all
2 components other than normal wear and maintenance items. Under warranties provided to
3 members of the Classes, Defendant promised to repair or replace covered defective
4 components arising out of defects in materials and/or workmanship, including the Exhaust
5 Fume Defect, at no cost to owners, operators, including police and first responders as well as
6 lessees of the Class Vehicles. As alleged herein, Defendant breached these warranties to all
7 persons including end users.

8 128. Plaintiffs and/or members of the Classes experienced the Exhaust Fume Defect within
9 the warranty periods but Defendant failed to inform Plaintiffs and members of the Classes
10 of the existence of the Exhaust Fume Defect and associated safety hazard, and failed to
11 provide a suitable remedy or repair of the Exhaust Fume Defect free of charge within a
12 reasonable time.

13 129. Any attempt by Defendant to disclaim or limit their express or implied warranties is
14 unconscionable and unenforceable here. Specifically, Defendant's warranty limitations are
15 unenforceable because it knowingly sold or leased a defective product without informing
16 consumers about the defect. The limits contained in Defendant's warranty periods are also
17 unconscionable and inadequate to protect Plaintiffs and members of the Classes. Among
18 other things, Plaintiffs and members of the Classes did not determine these limitations, the
19 terms of which unreasonably favored Defendant. A gross disparity in bargaining power
20 existed between Defendant and members of the Classes, and Defendant knew or should
21
22
23

1
2 have known that the Class Vehicles were defective at the time of sale or lease and that they
3 posed a safety risk.

4 130. The Class Vehicles' implied warranties are covered under 15 U.S.C. §
5 2301(7).

6 131. Defendant breached these warranties by failing to disclose and fraudulently concealing
7 information regarding the standard, quality or grade of the Class Vehicles and the presence of
8 the Exhaust Fume Defect. Without limitation, the Class Vehicles share a common defect
9 in design, material, manufacturing and/or workmanship that fails to operate as represented
10 by Defendant and presents a safety risk.

11 132. Affording Defendant a reasonable opportunity to cure its breach of warranties would be
12 unnecessary and futile. At the time of sale or lease of each Class Vehicle and all relevant
13 times thereafter, Defendant knew, or was reckless in not knowing, of the material omissions
14 concerning the standard, quality or grade of the Class Vehicles and the presence of the
15 Exhaust Fume Defect, but failed to repair or remedy and/or disclose the defect. Under the
16 circumstances, the remedies available under any informal settlement procedure would be
17 inadequate and any requirement that Plaintiffs resort to an informal dispute resolution
18 procedure and/or afford Defendant a reasonable opportunity to cure their breach of warranties
19 is excused and thereby deemed satisfied.

20 133. Plaintiffs and/or members of the Classes would suffer economic hardship if they
21 returned their Class Vehicles, but did not receive the return of all payments made by them to
22

1 Defendant. Thus, Plaintiffs and/or members of the Classes have not re-accepted their Class
2 Vehicles by retaining them.

3 134. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of
4 \$25. The amount in controversy of this action exceeds the sum of \$100,000, exclusive of
5 interest and costs, computed on the basis of all claims to be determined in this lawsuit and
6 therefore is not subject to arbitration.

7 135. Plaintiffs, individually and on behalf of members of the Classes, seek all damages
8 permitted by law, including diminution in the value of the Class Vehicles, in an amount to be
9 proven at trial.

10 **COUNT VI Unjust Enrichment**

11 **(On behalf of the Class or, alternatively, on behalf of the named Plaintiffs)**

12
13 136. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
14 herein.

15 137. Plaintiffs bring this count on behalf of themselves and the Class.

16 138. Plaintiffs and members of the Classes conferred a benefit on Defendant by
17 leasing, purchasing, driving or operating the Class Vehicles. Defendant was and should have
18 been reasonably expected to provide Class Vehicles free from the Exhaust Fume Defect and
19 associated safety risks.

20 139. Defendant unjustly profited from the lease and sale of the Class Vehicles at
21 inflated prices as a result of its omissions and concealment of the Exhaust Fume Defect in the
22 Class Vehicles. Defendant gouged consumers and endangered end users.

1 140. As a proximate result of Defendant's omissions and concealment of the Exhaust Fume
2 Defect in the Class Vehicles, and as a result of Defendant's ill- gotten gains, benefits and
3 profits, Defendant has been unjustly enriched at the expense of Plaintiffs and members of the
4 Classes. It would be inequitable for Defendant to retain its ill-gotten profits without
5 paying the value thereof to Plaintiffs and members of the Classes.

6 141. Plaintiffs and/or members of the Classes are entitled to restitution of the amount of
7 Defendant's ill-gotten gains, benefits and profits, including interest, resulting from its
8 unlawful, unjust and inequitable conduct.

9 142. Plaintiffs and members of the Classes seek an order requiring Defendant to
10 disgorge its gains and profits to Plaintiffs and members of the Classes, together with
11 interest, in a manner to be determined by the Court.

12 143. A causal relationship exists between Defendant's deceptive and unlawful conduct
13 and the ascertainable losses suffered by Plaintiff and members of the class.

14
15 **COUNT VII**

16 **VIOLATION OF THE CONSUMER PROTECTION LAW, RCW 19.86**

17 **(On Behalf of Plaintiffs and the potential Class)**

18 144. Plaintiffs incorporate by reference all allegations in the above preceding
19 paragraphs as if set forth fully in this count.

20 145. Plaintiffs assert this count on behalf of themselves and members of the Class.

21 146. Plaintiffs are persons within the context of the Consumer Protection Act as
22 defined in RCW 19.86

1 147. Defendant is a person within the context of RCW 19.86.

2 148. Defendant is engaged in trade and commerce within the context of
3 Washington's consumer protection act;

4 149. Plaintiffs and members of the Class were damaged as described in RCW 19.86.090.

5 150. Defendant committed unfair and deceptive acts in the course of trade and commerce as
6 described in this complaint in violation of RCW 19.86.

7 151. Defendant committed unconscionable, deceptive and unfair trade practices including but
8 not limited to deception, fraud and the knowing concealment, suppression and omission of
9 material facts concerning Class Vehicles' defect, which permitted exhaust fumes, such as
10 carbon monoxide, to enter the passenger compartment; the actions of the Defendant have an
11 impact on the public interest; the actions of the defendant caused injury to the Plaintiff and
12 class members; the injuries received by the Plaintiff and class members are causally related to
13 the Defendant's deceptive actions.

14 152. Defendants actively suppressed the fact that the Class Vehicles permitted exhaust
15 fumes, such as carbon monoxide, to enter the passenger compartment because of materials,
16 workmanship, design and manufacture defects.

17 153. Defendant's deceptive trade practices were likely to deceive Plaintiffs and class
18 members acting reasonably under the circumstances under which Plaintiffs were caused to
19 suffer irreparable harm to their bodies. As consumers, Plaintiffs had no reasonable way to
20 know that Class Vehicles were defective in materials, workmanship, design and manufacture.
21 Any reasonable person under the circumstances would have relied on the representations of
22

1 Defendant who alone possessed the knowledge as to the quality and characteristics of the
2 Class Vehicles.

3 154. Defendant fraudulently concealed the defect within the express warranty period
4 without repairing it.

5 155. Defendant violated the Consumer Protection Act by failing to notify the police
6 agencies including Plaintiffs and other Class members of the Class Vehicles' defect, which
7 permitted exhaust fumes, such as carbon monoxide, to enter the passenger compartment and
8 that the defect could not be remedied.

9 156. Defendant violated the Consumer Protection Act by failing to inform Plaintiffs and
10 class members of the deadly potential outcomes which would be derived from operating the
11 class vehicles.

12 157. Defendant committed unfair and deceptive business practices as described in this
13 complaint. Defendant repeatedly violated the Consumer Protection Act on multiple
14 occasions with their continuous course of conduct including omissions of material fact
15 concerning, inter alia, the presence of the Exhaust Fume Defect in the Class Vehicles operated
16 by Plaintiffs and class members in their daily work activities.

17 158. As a proximate and direct result of Defendant's unfair and deceptive business trade
18 practices, Plaintiffs and members of the Class sustained an ascertainable loss, physical injury
19 and financial harm.

20 159. Defendant's conduct offends public policy as established by statutes and common law;
21 is immoral, unethical, oppressive and/or unscrupulous; and caused unavoidable substantial
22 injury to Class Vehicle operators such as Plaintiffs who were required to operate these

1 defective vehicles daily, and were subjected to long term Chronic Exposure to Carbon
2 Monoxide.

3 160. Plaintiff demand judgment against Defendant for restitution, disgorgement, statutory
4 and actual monetary damages including multiple damages, interest, costs, attorneys' fees and
5 injunctive relief including a declaratory judgment and an appropriate court order prohibiting
6 Defendant from further deceptive acts and practices described in this complaint.

7 **COUNT VIII**

8 **NEGLIGENCE**

9 **(On Behalf of Plaintiffs and the Class)**

10
11 161. Plaintiffs incorporate by reference all allegations in the above preceding
12 paragraphs as if set forth fully in this count.

13 162. Plaintiffs assert this count on behalf of themselves and members of the Class.

14 163. **Defendants negligently and recklessly engaged in conduct which caused**
15 **serious physical injury to Plaintiffs and other class members when it disregarded the**
16 **dangers of carbon monoxide exposure which was and is occurring on a daily basis to**
17 **operators of the class vehicles, especially first responders who rely on operating their**
18 **emergency vehicles on a daily basis. The serious disregard for human life exhibited by**
19 **the Defendant FORD MOTOR COMPANY shows egregious conduct which has caused**
20 **the most respected and honored members of society, our first responders to needlessly**
21 **be exposed to chronic and acute carbon monoxide gases which in fact poisoned the**
22 **Plaintiffs on a daily basis.**

1

2 **VIII. PRAYER FOR RELIEF**

3

4 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,
5 respectfully requests that this Court enter judgment against Defendant and in favor of
6 Plaintiffs and the Classes, and award the following relief:

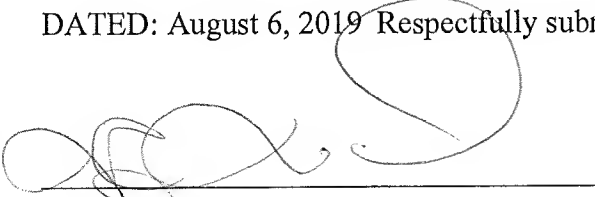
- 7 • An order certifying this action as a class action pursuant to Rule 23 of the, declaring
8 Plaintiffs as the representative of the Class and Plaintiff's counsel as counsel for the Class;
- 9 • An order awarding declaratory relief and enjoining Defendant from continuing the
10 unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices alleged
11 herein;
- 12 • Appropriate injunctive and equitable relief;
- 13 • A declaration that Defendant is financially responsible for all Class notice and the
14 administration of Class relief;
- 15 • An order awarding costs, restitution, disgorgement, punitive damages, statutory damages,
16 treble damages and exemplary damages under applicable law, and compensatory damages for
17 economic loss, diminished value, and out-of-pocket costs in an amount to be determined at
18 trial;
- 19 • An order awarding any applicable statutory and civil penalties;
- 20 • An order requiring Defendant to pay both pre- and post-judgment interest on any
21 amounts awarded;
- 22 • An award of costs, expenses and attorneys' fees as permitted by law; and

- 1 • Such other or further relief as the Court may deem appropriate, just, and equitable.

2 **IX. DEMAND FOR JURY TRIAL**

3
4 Pursuant to local rule Plaintiffs demand a trial by jury of any and all issues in this action so
5 triable of right.

6
7 DATED: August 6, 2019 Respectfully submitted,

8
9 

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12 Proposed Class
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